

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 ANTICIPATORY BAIL APPLICATION NO.1009 OF 2020

SHRIRANG DNYNOBA TUDME
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. V. D. Salunke i/b Salunke Mayur V.
APP for Respondents : Mr. S. Y. Mahajan.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 10-12-2020.

ORAL ORDER :

1. Heard learned Advocate appearing for the applicant and learned APP.
2. Learned Advocate for the applicant has taken this Court through the FIR and submitted that in fact the informant who is a Medical Officer on contract basis with Municipal Corporation, Latur had no authority to lodge the FIR, however she says that, she has been authorized by the Commissioner of Municipal Corporation to lodge the report. She has reproduced the complaint that has been made by the widow of the deceased who is stated to have taken treatment from the present applicant. It is stated by the said lady that initially the present applicant had given the treatment and on his say, she had bought saline as well as injections. According to her, her husband's condition became worst after

second saline was exhausted to the extent of 25 %. It is stated that thereafter on the say of the applicant, deceased was shifted to Superspeciality Hospital, Latur run by Dr. Pramod Ghuge. According to her, there was discussion between the present applicant and Dr. Ghuge. Though Dr. Ghuge had tried to give treatment, it was informed around 01.00 p.m. to 02.00 p.m. that deceased has expired. According to the said lady i.e. Shobha Telange, on the insistence upon the present applicant and Dr. Ghuge who were in frightened condition, they had asked her to take the body and due to the threats given by them, she says that she had not informed the said fact to the police and cremated the body as per Christian rites. However, it is thereafter her say that an application was given by her informing the fact about death of her husband due to the negligence of the doctor, then AD was registered and inquiry under Section 174 of CrPC is going on. The informant says that the applicant is not a registered practitioner and still he is found to be involved in giving treatment to patients. It has been submitted on behalf of the applicant that the applicant is diploma holder in Electro-Homeopathy. Documents to that effect have been produced. So also he has been qualified by Akhil Bhartiya Prakritik Chikitsa Parishad in Naturopathy and Yogic Science. Though those certificates are in the nick name of the applicant, he has got his name corrected by giving a publication in the Gazette and he has produced the copy of the Gazette

also. According to the applicant he has tried to give proper treatment to the deceased. The story has been cooked by the widow of the deceased. There is no question of negligence on the part of the applicant, and therefore, his custody is not required for the purpose of investigation. Learned Advocate, therefore, prayed for anticipatory bail to the applicant.

3. Learned APP strongly opposed the application and submitted that it is the second offence that has been registered against the present applicant. The earlier offence is vide Crime No.347 of 2017, registered with MIDC Police Station, Latur for the same sections and the applicant has approached this Court for quashing the FIR, however that matter is still pending. It is also submitted that the widow of the deceased in this case is approached the Division Bench of this Court in Criminal Writ Petition No.755 of 2020. On 08-09-2020 the Division Bench has taken a note of the earlier offence i.e. registered against the applicant, and thereafter, after taking the notice of the fact that the Investigating Officer is waiting for the Chemical Analysis report, and also the fact was noted that the dead body in highly decomposed condition, it was still opined that the further action cannot be stopped, and it was observed that, the Investigating Officer will take some decision on the basis of material that is collected. Thereafter, on 22-09-2020 it was informed

by the Investigating Officer that the Experts committee of doctor is approached to ascertain the negligence, and taking into consideration the previous FIR, both the matters appear to have been tagged together.

4. Learned APP further submitted that whether the matter can be referred and in view of the directions by the Hon'ble Supreme Court in the cases of medical negligence to be followed in a particular case or not would depend on the facts of the case if that doctor is a registered doctor under proper form of medicine. Here, the present applicant was not at all authorized to administer the treatment which has been described in the complaint which was lodged by the widow of the deceased. Further it appears that the present applicant has not kept the case papers in proper format which could be then referred to the expert. Whatever documents of treatment were with doctor Pramod Ghuge those have been collected, his statement is also recorded. Further another doctor who works with the applicant, his statement is also recorded and he is clearly stating that the reference letter is not signed by him. Under such circumstance, the physical custody of the applicant would be necessary for the purpose of investigation.

5. At the outset, it is to be noted that the widow of the deceased appears to have not directly approached to the police, but then learned

APP submits that, she had approached but FIR as contemplated under Section 154 of CrPC has not been registered by police on the basis of her information. That fact as to whether her that communication to police can be treated as FIR or not would be the subject matter of the trial. However, the facts still remains as to how the Commissioner of Municipal Corporation to whom it appears that a copy of the complaint filed by the widow was given, can authorize one of the employee of Municipal Corporation to lodge the report. At this stage, it can also be observed that the criminal law set can be set in motion by anybody, and therefore, we need not deliberate on the point as to whether the informant has authority to lodge the FIR or not. The point that is required to be considered in this case is that, whether the physical custody of the applicant is required for the purpose of investigation or not. One more factor that cannot be brushed aside is that this is the second offence that is stated to be registered against the present applicant. But then as regards the first offence is concerned, he has already approached to this Court for quashing of the FIR and the said petition is pending.

6. As regards the facts those are alleged in this particular case are concerned, it is to be noted that the husband of the complainant should who have filed the complaint with Commissioner of Municipal

Corporation, is stated to have been admitted to the hospital of the applicant on 18-01-2020 and 10.30 to 11.00 a.m. On the same day after his health deteriorated it is stated that he was shifted to Dr.Ghuge's Superspeciality Hospital, and on the same day he expired. The fact of death was not reported to the police immediately, and in fact the body was cremated as per the Christian rites on the same day. From the police papers the A.D. can be seen to have been lodged on 11-02-2020 i.e. almost after a month. Thereafter, it appears that after adopting the procedure, the exhumation of the dead body was done on 15-02-2020 and the body was sent for post mortem. Perusal of the post mortem report would show that the probable cause of death is stated to be thus;

"Body is in advanced stage of decomposition, viscera preserved for chemical analysis, organs preserved for histopathology examination, samples preserved for DNA examination, skin samples from eight different sites taken for chemical analysis. Eight soil samples collected at the time of exhumation sent for chemical analysis, one bottle containing clothes sent for chemical analysis. Final opinion will be given after the receipt of above reports."

That means, the final opinion was not given. It appears that thereafter the Chemical Analysis reports have been received, yet even as per the submission by learned APP, the final opinion is not given in view of the

statement made before the Division Bench by the Investigating Officer that the matter has been referred to the experts committee of doctors. Thus, at this stage even the final opinion regarding death of the deceased has not been arrived at, and therefore, we can say that still this case is not at the stage of *prima facie* opinion about the medical negligence which can be said to be covered under Section 304 of IPC.

7. Now as regards the other sections are concerned in Indian Penal Code as well as the Maharashtra Medical Practitioners Act, the physical custody of the applicant is not required. Even if for the sake of arguments it is noted that the present applicant is professing the medical field, in that field which is not authorized, then it is for the appropriate authorities to take immediate action under the permissible law and only registration of the offence is not the solution. When the instances of giving treatment under certain other Pathy which was not authorized come to light, then in order to protect the mankind from the further effects of such Pathy which would be adopted by the applicant in future would be in question, then at the most necessary conditions would be required to be imposed, but for that purpose sending the applicant in the physical custody of the police, is not the solution. The delay in lodging the FIR in this case and the fact that still the final outcome is awaited, it prompts this Court to come to the conclusion

that he deserves to be released on anticipatory bail, however stringent conditions deserve to be imposed. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the present applicant Shrirang s/o Dnyanoba Tudme, in connection with Crime No.321 of 2020, dated 30-09-2020, registered with Shivaji Nagar Police Station, Latur, for the offences punishable under Section 304, 419, 420 of IPC and under Section 33 of Maharashtra Medical Practitioners Act, he be released on PR of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty five thousand).
- 3) The applicant shall not tamper with the evidence of prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) The applicant shall remain present before the Investigating Officer on every Monday, Wednesday and Friday between 11.00 a.m. to 02.00 p.m., till filing of charge-sheet.
- 6) He shall co-operate with the investigation.
- 7) The applicant shall not indulge in practice which would be allopathy practice, till the filing of charge-sheet, and if the charge-sheet is filed, then till the conclusion of trial.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.